

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JUSTIN WADE MCKNIGHT,

Appellant.

No. 38944-4-II

UNPUBLISHED OPINION

Houghton, J.—Justin McKnight appeals his convictions for five counts of unlawful delivery of marijuana, arguing that the trial court erred in denying his request to have new trial counsel appointed.¹ We affirm.

FACTS

Because McKnight raises only a procedural issue, we briefly review the substantive facts. After an informant made five controlled buys of marijuana from McKnight between January 10 and February 7, 2008, the State charged McKnight with five counts of unlawful delivery of marijuana. In a statement made to police and during his trial testimony, McKnight asserted that he was merely a middleman between the supplier and the buyer.

Ten months after being charged, and five days before his trial was to begin, McKnight asked the trial court to appoint new defense counsel, stating:

¹ A commissioner of this court initially considered McKnight's appeal as a motion on the merits under RAP 18.14 and then transferred it to us as a panel of judges.

I feel that I have lost the ability to communicate with my counsel. Every time I ask questions I have been called—I’ve been called stupid, I’m just a doper, I don’t understand how this works, and it’s gotten to the point where I’m afraid to ask my counsel for advice or questions on fear that I am [going] to upset him, and he has control of my case. I’ve been unable to contact him on various times.

. . . [T]his isn’t a matter I even want to take to trial. Now I have to—I’m kind of being forced to take it to trial with an attorney I don’t feel has my best interest.

Report of Proceeding (Feb. 4, 2009) (RP) at 8-9.

McKnight rejected the trial court’s suggestion that he only had a personality conflict with his counsel. The trial court denied McKnight’s request, stating that “[t]o appoint new counsel at this point . . . would be irresponsible on the part of the Court because . . . that attorney could not be prepared for trial this week.” RP at 10. McKnight persisted, stating that he believed he had been entrapped but that his counsel had not interviewed witnesses he had suggested to support that defense. The trial court reiterated its ruling that there was only a personality conflict between McKnight and his counsel and again denied McKnight’s request.

A jury found McKnight guilty of the five counts of unlawful delivery of marijuana. He appeals.

ANALYSIS

McKnight argues that the trial court violated his Sixth Amendment right to counsel when it denied his request to appoint new counsel. We review the denial of a request for new counsel for abuse of discretion. *State v. Varga*, 151 Wn.2d 179, 200, 86 P.3d 139 (2004); *In re Pers. Restraint of Stenson*, 132 Wn.2d 710, 733-34, 16 P.3d 1 (2001). A trial court abuses its discretion when it bases its decision on untenable or unreasonable grounds. *Stenson*, 132 Wn.2d at 701.

“To justify appointment of new counsel, a defendant ‘must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or complete breakdown in communication between the attorney and the defendant.’ ” *Varga*, 151 Wn.2d at 200 (quoting *Stenson*, 132 Wn.2d at 734). In considering a request for appointment of new counsel, the trial court is to consider: (1) the reasons given for the dissatisfaction with counsel, (2) the court’s evaluation of counsel, (3) the effect of substitution on the proceedings, (4) the extent of the conflict, (5) the adequacy of the inquiry, and (6) the timeliness of the request. *Stenson*, 132 Wn.2d at 734; *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 723-24, 16 P.3d 1 (2001).

McKnight contends that a complete breakdown in communication had occurred because his defense counsel had not reviewed all of the evidence, had not pursued the entrapment defense he wanted to assert, and had not interviewed witnesses he had suggested.² But he does not show that the trial court abused its discretion in concluding otherwise. The trial court adequately inquired into the reasons for and extent of the conflict. It noted that the request was brought just days before trial and that granting the request would result in another trial continuance. And the trial court noted that counsel had been effective in other cases before it. McKnight had only a general loss of confidence in his counsel. That alone is not sufficient to require substitution of counsel. *Stenson*, 132 Wn.2d at 734.

² After the request for new counsel was denied, McKnight’s counsel attempted to contact the witnesses that McKnight had suggested, but was unable to.

No. 38944-4-II

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record. RCW 2.06.040.

Houghton, J.

We concur:

Hunt, J.

Penoyar, A.C.J.